

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN ASSEMBLY JULY 23, 2001

AMENDED IN ASSEMBLY JULY 3, 2001

AMENDED IN SENATE MARCH 29, 2001

SENATE BILL

No. 771

**Introduced by Senator Figueroa
(Principal coauthor: Senator Burton)
(Coauthor: Senator Karnette)**

(Coauthors: Assembly Members Alquist, Aroner, Bates, Havice,
Keeley, Richman, Shelley, and Strom-Martin)

February 23, 2001

An act to add Article 8 (commencing with Section 17590) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 771, as amended, Figueroa. Unsolicited and unwanted telephone solicitations.

Existing law prohibits certain unfair business practices, including certain advertising practices.

This bill would require the Department of Consumer Affairs to maintain a "do not call" list, containing the telephone numbers of telephone subscribers who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors. It would prohibit, subject to certain exceptions, a ~~telephone~~ *telephone* solicitor from calling any telephone number ~~on~~, *beginning on or after the 31st day after the then current "do not call" list becomes available*, to, among

other things, seek to *rent*, sell, *exchange*, *promote*, *gift*, or lease any ~~consumer~~ goods or services. It would also prohibit persons who sell, lease, *exchange*, or rent telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies, from including in their lists telephone numbers that appear on the then current “do not call” list. Fees paid by telephone solicitors would be deposited in the Special Telephone Solicitors Fund created by the bill.

Existing law makes it a crime to violate any of the provisions governing advertising. By adding these new prohibitions to those provisions, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 8 (commencing with Section 17590) is
2 added to Chapter 1 of Part 3 of Division 7 of the Business and
3 Professions Code, to read:

4
5 Article 8. Unsolicited and Unwanted Telephone Solicitations

6
7 17590. (a) There is a compelling state interest to protect the
8 privacy of telephone subscribers who wish to avoid unsolicited
9 and unwanted telephone solicitations.

10 (b) The act of becoming a telephone subscriber should not
11 undermine or lessen a person’s right of privacy as guaranteed
12 under Section 1 of Article I of the California Constitution.

13 17591. (a) The Department of Consumer Affairs shall
14 maintain a “do not call” list, updated no less frequently than
15 quarterly, which shall set forth the telephone numbers, but not the
16 names or addresses, of telephone subscribers, arranged by area
17 code and numerical sequence, who do not wish to receive
18 unsolicited and unwanted telephone calls from telephone

solicitors as ~~described~~ *defined* in Section 17592. The “do not call” list shall indicate any exclusions designated by the telephone subscriber as provided in subdivision (b).

(b) Telephone subscribers may place their telephone numbers on the “do not call” list in the manner prescribed by the department. A telephone subscriber may exclude from the coverage of the “do not call” list telephone calls ~~made by the representative of any entity with which the subscriber or any member of the subscriber’s household has a bank or investment account, financial relationship, or insurance coverage, or from which the subscriber or household member has previously purchased goods or services from entities identified by the telephone subscriber.~~ The telephone subscriber shall designate any exclusions in the manner prescribed by the department.

(c) Telephone solicitors, as defined in Section 17592, ~~may~~ *shall* obtain copies of the “do not call” list by paying a fee to the department in an amount not to exceed the costs incurred by the department in the preparation, production, and distribution of that list. The department shall offer a statewide list and shall also offer lists of areas within the state. The determination of the number and definition of areas shall be within the discretion of the department.

(d) It is the intent of the Legislature that the fees paid to the department by telephone solicitors be utilized by the department in carrying out this article and shall not exceed the actual estimated costs in carrying out this article. The fees obtained by the department shall be deposited in the Special ~~Telephonic~~ *Telephone* Solicitors Fund, which is hereby created. All moneys in the fund shall be subject to annual appropriation in the Budget Act.

(e) A person or entity that obtains a “do not call” list shall not use the list for any purpose other than to comply with this article.

~~(f) The procedures prescribed by the department for the implementation of this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

17592. (a) For purposes of this article, a “telephone solicitor” means any person or entity who, on his or her own behalf or through salespersons or agents, *automatic dialing announcing devices*, or otherwise, *makes or causes a telephone call to be made that* does any of the following:

- 1 (1) Seeks to *rent, sell, exchange, promote, gift, or lease* ~~any~~
2 ~~consumer~~ goods or services or documents that can be used to
3 obtain goods or services.
- 4 (2) Offers or solicits *or seeks to offer or solicit* any extension
5 of credit for personal, family, or household purposes.
- 6 (3) Seeks marketing information ~~for any purpose that will or~~
7 ~~may be used for the direct solicitation of a sale of goods or services~~
8 ~~to the telephone subscriber.~~
- 9 (4) Seeks to sell *or promote* any investment, insurance, or
10 financial services.
- 11 ~~(5) Makes any representation described in Section 17511.1.~~
- 12 (5) *Seek to make any telephone solicitation or attempted*
13 *telephone solicitation as described in Section 17511.1.*
- 14 (b) Except for telephone calls described in subdivision (d),
15 *beginning on the 31st day after the current “do not call” list*
16 *becomes available, no telephonic telephone solicitor shall call any*
17 *telephone number on the then current “do not call” list and do any*
18 *of the following:*
- 19 (1) Seek to *rent, sell, exchange, promote, gift, or lease* ~~any~~
20 ~~consumer~~ goods or services or documents that can be used to
21 obtain goods or services.
- 22 (2) Offer or solicit *or seeks to offer or solicit* any extension of
23 credit for personal, family, or household purposes.
- 24 (3) Seek marketing information ~~for any purpose that will or~~
25 ~~may be used for the direct solicitation of a sale of goods or services~~
26 ~~to the telephone subscriber.~~
- 27 (4) Seek to sell *or promote* any investment, insurance, or
28 financial services.
- 29 ~~(5) Make any representation described in Section 17511.1.~~
- 30 (5) *Seek to make any telephone solicitation or attempted*
31 *telephone solicitation as described in Section 17511.1.*
- 32 (c) No person or entity ~~which~~ *that* sells, leases, *exchanges*, or
33 rents telephone solicitation lists, except for directory assistance
34 and telephone directories sold by telephone companies or their
35 affiliates, shall include in those lists those telephone numbers that
36 appear on the current “do not call” list.
- 37 (d) Subdivision (b) shall not apply to any of the following:
- 38 (1) Telephone calls made in response to the express *written*
39 ~~request of, or an advertisement by, the person called or based upon~~
40 *the prior written permission of, the telephone subscriber as*

obtained through the process described in subdivision (e). As used in this paragraph, “express written request” or “prior written permission” means a request or permission evidenced by a document signed by the telephone subscriber and does not include a request or permission communicated orally, either in person or over the telephone. “Express written request” or “prior written permission” also does not include any request or permission provided at the time or place of the purchase, rental, lease, exchange, or promotion of goods or services or included in any contract of adhesion.

(2) Telephone calls made in connection with the collection of a debt or the offer by a creditor to the ~~person-called~~ telephone subscriber of an extension of credit to pay a delinquent obligation owed by the ~~person-called~~ telephone subscriber to that creditor.

(3) Telephone calls that the telephone subscriber excluded from the coverage of the “do not call” list as provided in subdivision (b) of Section 17591.

(4) Telephone calls made to a telephone subscriber if the telephone solicitor has an existing business relationship with the telephone subscriber. As used in this paragraph, “existing business relationship” means a relationship formed by a voluntary, two-way communication between a telephone solicitor and a telephone subscriber with or without an exchange of consideration, on the basis of an application, purchase, rental, lease, or transaction. This term also includes a relationship with a nonprofit entity formed through means such as previous donations to the nonprofit entity or participation in or attendance at, events held by the nonprofit entity. Notwithstanding the provisions of this paragraph, an existing business relationship does not exist between the telephone subscriber and any separate legal entity associated with the telephone solicitor not acting as an agent or vendor on behalf of the telephone solicitor in the sale or marketing of the solicitor’s goods or services. These separate legal entities include, but are not limited to, any parent company or entity, any subsidiary company or entity, any partnership or copartner, any joint venture or venturer, association member, or comember, or any affiliated company or entity.

(e) Nothing in this section prohibits a telephone solicitor from contacting by mail a telephone subscriber whose telephone number appears on the “do not call” list to obtain the subscriber’s



1 express, *written* permission allowing the telephone solicitor to
2 make the ~~type of~~ calls described in subdivision (b). *In any dispute*
3 *regarding whether a telephone subscriber has provided this*
4 *express, written permission, the telephone solicitor has the burden*
5 *of proving that the subscriber has provided this permission by*
6 *producing the original documents, signed by the subscriber,*
7 *evidencing that permission.*

8 17593. (a) Any person who has received a telephone
9 solicitation that is prohibited by Section 17592 *or whose telephone*
10 *number was used in violation of subdivision (e) of Section 17591,*
11 may bring a civil action in any court of competent jurisdiction
12 against a ~~telephonic~~ telephone solicitor to recover or obtain any
13 one or more of the following remedies:

14 (1) An order to enjoin the violation.

15 (2) A civil penalty of up to five hundred dollars (\$500) for the
16 first violation and up to one thousand dollars (\$1,000) for a second
17 and each subsequent violation.

18 (3) Court costs, including reasonable attorney's fees.

19 (4) Any other relief that the court deems proper.

20 (b) Nothing in this article shall limit the ~~authority of the~~
21 ~~Attorney General, district attorneys, or city attorneys under~~
22 *enforcement provisions under Chapter 5 (commencing with*
23 *Section 17200) of Part 2 or under this part.*

24 (c) The rights, remedies, and penalties established by this
25 article are in addition to the rights, remedies, or penalties
26 established under other laws.

27 (d) *It shall be an affirmation defense to any action brought*
28 *under this section or any other law, that the violation was*
29 *accidental and in violation of the telephone solicitor's policies and*
30 *procedures and telemarketer instruction and training.*

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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